

110TH CONGRESS
1ST SESSION

H. R. 46

To amend the Internal Revenue Code of 1986 to provide tax incentives
for small businesses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2007

Ms. VELÁZQUEZ introduced the following bill; which was referred to the
Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide
tax incentives for small businesses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE, ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Small Business Tax Fairness and Simplification Act of
6 2007”.

7 (b) REFERENCES TO INTERNAL REVENUE CODE.—
8 Except as otherwise expressly provided, whenever in this
9 Act an amendment or repeal is expressed in terms of an
10 amendment to, or repeal of, a section or other provision,

1 the reference shall be considered to be made to a section
 2 or other provision of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents for
 4 this Act is as follows:

- Sec. 1. Short title, etc.
- Sec. 2. Application of cafeteria plan rules, etc., to self-employed individuals.
- Sec. 3. Long-term care insurance permitted to be offered under cafeteria plans and flexible spending arrangements.
- Sec. 4. Amortization of certain intangibles acquired from eligible small businesses.
- Sec. 5. Increase in exclusion of gain from qualified small business stock.
- Sec. 6. Standard home office deduction.
- Sec. 7. Qualified small businesses election of taxable year ending in a month from April to November.
- Sec. 8. Increase in maximum number of S corporation shareholders.
- Sec. 9. Government contracts with small businesses not subject to tax withholding.

5 **SEC. 2. APPLICATION OF CAFETERIA PLAN RULES, ETC., TO**
 6 **SELF-EMPLOYED INDIVIDUALS.**

7 (a) IN GENERAL.—Section 125(d) (defining cafeteria
 8 plan) is amended by adding at the end the following new
 9 paragraph:

10 “(3) EMPLOYEE TO INCLUDE SELF-EM-
 11 PLOYED.—

12 “(A) IN GENERAL.—The term ‘employee’
 13 includes an individual who is an employee with-
 14 in the meaning of section 401(c)(1) (relating to
 15 self-employed individuals).

16 “(B) LIMITATION.—The amount which
 17 may be excluded under subsection (a) with re-
 18 spect to a participant in a cafeteria plan by rea-
 19 son of being an employee under subparagraph

1 (A) shall not exceed the employee's earned in-
 2 come (within the meaning of section 401(c)) de-
 3 rived from the trade or business with respect to
 4 which the cafeteria plan is established.”

5 (b) APPLICATION TO BENEFITS WHICH MAY BE
 6 PROVIDED UNDER CAFETERIA PLAN.—

7 (1) GROUP-TERM LIFE INSURANCE.—Section
 8 79 (relating to group-term life insurance provided to
 9 employees) is amended by adding at the end the fol-
 10 lowing new subsection:

11 “(f) EMPLOYEE INCLUDES SELF-EMPLOYED.—

12 “(1) IN GENERAL.—For purposes of this sec-
 13 tion, the term ‘employee’ includes an individual who
 14 is an employee within the meaning of section
 15 401(c)(1) (relating to self-employed individuals).

16 “(2) LIMITATION.—The amount which may be
 17 excluded under the exceptions contained in sub-
 18 section (a) or (b) with respect to an individual treat-
 19 ed as an employee by reason of paragraph (1) shall
 20 not exceed the employee's earned income (within the
 21 meaning of section 401(c)) derived from the trade or
 22 business with respect to which the individual is so
 23 treated.”

24 (2) ACCIDENT AND HEALTH PLANS.—Section
 25 105(g) is amended to read as follows:

1 “(g) EMPLOYEE INCLUDES SELF-EMPLOYED.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion, the term ‘employee’ includes an individual who
4 is an employee within the meaning of section
5 401(c)(1) (relating to self-employed individuals).

6 “(2) LIMITATION.—The amount which may be
7 excluded under this section by reason of subsection
8 (b) or (c) with respect to an individual treated as an
9 employee by reason of paragraph (1) shall not ex-
10 ceed the employee’s earned income (within the mean-
11 ing of section 401(c)) derived from the trade or
12 business with respect to which the accident or health
13 insurance was established.”

14 (3) CONTRIBUTIONS BY EMPLOYERS TO ACCI-
15 DENT AND HEALTH PLANS.—

16 (A) IN GENERAL.—Section 106 is amended
17 by adding at the end the following new sub-
18 section:

19 “(c) EMPLOYER TO INCLUDE SELF-EMPLOYED.—

20 “(1) IN GENERAL.—For purposes of this sec-
21 tion, the term ‘employee’ includes an individual who
22 is an employee within the meaning of section
23 401(c)(1) (relating to self-employed individuals).

24 “(2) LIMITATION.—The amount which may be
25 excluded under subsection (a) with respect to an in-

dividual treated as an employee by reason of paragraph (1) shall not exceed the employee's earned income (within the meaning of section 401(c)) derived from the trade or business with respect to which the accident or health insurance was established.”

(B) CLARIFICATION OF LIMITATIONS ON OTHER COVERAGE.—The first sentence of section 162(l)(2)(B) is amended to read as follows: “Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer participates in any subsidized health plan maintained by any employer (other than an employer described in section 401(c)(4)) of the taxpayer or the spouse of the taxpayer.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 3. LONG-TERM CARE INSURANCE PERMITTED TO BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) CAFETERIA PLANS.—The last sentence of section 125(f) (defining qualified benefits) is amended to read as follows: “Such term shall include the payment of premiums for any qualified long-term care insurance contract (as defined in section 7702B) to the extent the amount

1 of such payment does not exceed the eligible long-term
 2 care premiums (as defined in section 213(d)(10)) for such
 3 contract”.

4 (b) FLEXIBLE SPENDING ARRANGEMENTS.—Section
 5 106 (relating to contributions by employer to accident and
 6 health plans), as amended by section 2, is amended by
 7 striking subsection (c) and redesignating subsection (d) as
 8 subsection (c).

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to taxable years beginning after
 11 the date of the enactment of this Act.

12 **SEC. 4. AMORTIZATION OF CERTAIN INTANGIBLES AC-**
 13 **QUIRED FROM ELIGIBLE SMALL BUSINESSES.**

14 (a) IN GENERAL.—Section 197 (relating to amortiza-
 15 tion of goodwill and certain other intangibles) is amended
 16 by redesignating subsection (g) as subsection (h) and in-
 17 serting after subsection (f) the following new subsection:

18 “(g) AMORTIZATION OF INTANGIBLES ACQUIRED
 19 FROM ELIGIBLE SMALL BUSINESSES.—

20 “(1) IN GENERAL.—In the case of any qualified
 21 amortizable section 197 intangible, subsection (a)
 22 shall be applied by substituting ‘5-year period’ for
 23 ‘15-year period’.

24 “(2) QUALIFIED AMORTIZABLE SECTION 197 IN-
 25 TANGIBLE.—For purposes of this subsection, the

1 term ‘qualified amortizable section 197 intangible’
2 means any amortizable section 197 intangible which
3 is acquired in a transaction (or series of trans-
4 actions) involving the acquisition of assets consti-
5 tuting a trade or business or substantial portion
6 thereof from an eligible small business (as defined in
7 section 474(c)) after the date of the enactment of
8 this subsection.

9 “(3) MAXIMUM AMOUNT PER BUSINESS.—

10 “(A) IN GENERAL.—The aggregate ad-
11 justed basis of qualified amortizable section 197
12 intangibles of each eligible small business which
13 the taxpayer may amortize under paragraph (1)
14 shall not exceed \$5,000,000.

15 “(B) ALLOCATION OF DOLLAR AMOUNT.—

16 “(i) CONTROLLED GROUP.—For pur-
17 poses of applying the dollar limitations in
18 subparagraph (A)—

19 “(I) all component members of a
20 controlled group shall be treated as
21 one taxpayer, and

22 “(II) such dollar limitations shall
23 be allocated among the component
24 members of such controlled group in

1 such manner as the Secretary pre-
2 scribes.

3 For purposes of the preceding sentence,
4 the term ‘controlled group’ has the mean-
5 ing given to such term by section 1563(a),
6 except that ‘more than 50 percent’ shall be
7 substituted for ‘at least 80 percent’ each
8 place it appears in section 1563(a)(1).

9 “(ii) PARTNERSHIPS AND S CORPORA-
10 TIONS.—In the case of a partnership, the
11 dollar limitations in subparagraph (A)
12 shall apply with respect to the partnership
13 and with respect to each partner. A similar
14 rule shall apply in the case of an S cor-
15 poration and its shareholders.

16 “(C) SUBSECTION NOT TO APPLY TO
17 TRUSTS.—This subsection shall not apply to
18 trusts.

19 “(D) ESTATES.—The benefit of the special
20 deduction provided by this subsection shall be
21 allowed to estates in the same manner as in the
22 case of an individual. The allowable deduction
23 shall be apportioned between the income bene-
24 ficiary and the fiduciary in the manner pre-
25 scribed by the Secretary. Any amount so appor-

tioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under this subsection to such beneficiary.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to acquisitions of qualified amortizable section 197 intangibles (as defined in section 197(g)(2) of the Internal Revenue Code of 1986, as added by this section) after the date of the enactment of this Act.

SEC. 5. INCREASE IN EXCLUSION OF GAIN FROM QUALIFIED SMALL BUSINESS STOCK.

(a) **IN GENERAL.**—Paragraph (1) of section 1202(a) is amended by striking “50 percent” and inserting “62.5 percent”.

(b) **EMPOWERMENT ZONE BUSINESSES.**—Subparagraph (A) of section 1202(a)(2) is amended—

(1) by striking “60 percent” and inserting “75 percent”, and

(2) by striking “50 percent” and inserting “62.5 percent”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to sales or exchanges of qualified small business stock in taxable years beginning after the date of the enactment of this Act.

1 **SEC. 6. STANDARD HOME OFFICE DEDUCTION.**

2 (a) IN GENERAL.—Subsection (c) of section 280A
3 (relating to disallowance of certain expenses in connection
4 with business use of home, rental of vacation homes, etc.)
5 is amended by adding at the end the following new para-
6 graph:

7 “(7) STANDARD HOME OFFICE DEDUCTION.—
8 Subject to the limitation of paragraph (5), in the
9 case of a use described in paragraph (1), (2), or (4),
10 and in the case of a use described in paragraph (3)
11 where the dwelling unit is used by the taxpayer dur-
12 ing the taxable year as a residence, the deductions
13 allowed under this chapter for the taxable year by
14 reason of being attributed to such use shall not be
15 less than \$2,500.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years ending after the
18 date of the enactment of this Act.

19 **SEC. 7. QUALIFIED SMALL BUSINESSES ELECTION OF TAX-**
20 **ABLE YEAR ENDING IN A MONTH FROM**
21 **APRIL TO NOVEMBER.**

22 (a) IN GENERAL.—Part I of subchapter E of chapter
23 1 of the Internal Revenue Code of 1986 (relating to ac-
24 counting periods) is amended by inserting after section
25 444 the following new section:

1 **“SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTION OF**
2 **TAXABLE YEAR ENDING IN A MONTH FROM**
3 **APRIL TO NOVEMBER.**

4 “(a) GENERAL RULE.—A qualified small business
5 may elect to have a taxable year, other than the required
6 taxable year, which ends on the last day of any of the
7 months of April through November (or at the end of an
8 equivalent annual period (varying from 52 to 53 weeks)).

9 “(b) YEARS FOR WHICH ELECTION EFFECTIVE.—An
10 election under subsection (a)—

11 “(1) shall be made not later than the due date
12 (including extensions thereof) for filing the return of
13 tax for the first taxable year of the qualified small
14 business, and

15 “(2) shall be effective for such first taxable year
16 or period and for all succeeding taxable years of
17 such qualified small business until such election is
18 terminated under subsection (c).

19 “(c) TERMINATION.—

20 “(1) IN GENERAL.—An election under sub-
21 section (a) shall be terminated on the earliest of—

22 “(A) the first day of the taxable year fol-
23 lowing the taxable year for which the entity
24 fails to meet the gross receipts test,

25 “(B) the date on which the entity fails to
26 qualify as an S corporation, or

1 “(C) the date on which the entity termi-
2 nates.

3 “(2) GROSS RECEIPTS TEST.—For purposes of
4 paragraph (1), an entity fails to meet the gross re-
5 ceipts test if the entity fails to meet the gross re-
6 ceipts test of section 448(c).

7 “(3) EFFECT OF TERMINATION.—An entity
8 with respect to which an election is terminated
9 under this subsection shall determine its taxable
10 year for subsequent taxable years under any other
11 method that would be permitted under subtitle A.

12 “(4) INCOME INCLUSION AND DEDUCTION
13 RULES FOR PERIOD AFTER TERMINATION.—If the
14 termination of an election under paragraph (1)(A)
15 results in a short taxable year—

16 “(A) items relating to net profits for the
17 period beginning on the day after its last fiscal
18 year-end and ending on the day before the be-
19 ginning of the taxable year determined under
20 paragraph (4) shall be includible in income rat-
21 ably over the succeeding 4 taxable years, or (if
22 fewer) the number of taxable years equal to the
23 fiscal years for which the election under this
24 section was in effect, and

1 “(B) items relating to net losses for such
2 period shall be deductible in the first taxable
3 year after the taxable year with respect to
4 which the election terminated.

5 “(d) DEFINITIONS.—For purposes of this section—

6 “(1) QUALIFIED SMALL BUSINESS.—The term
7 ‘qualified small business’ means an entity—

8 “(A)(i) for which an election under section
9 1362(a) is in effect for the first taxable year or
10 period of such entity and for all subsequent
11 years, or

12 “(ii) which is treated as a partnership for
13 the first taxable year or period of such entity
14 for Federal income tax purposes,

15 “(B) which conducts an active trade or
16 business or which would qualify for an election
17 to amortize start-up expenditures under section
18 195, and

19 “(C) which is a start-up business.

20 “(2) START-UP BUSINESS.—For purposes of
21 paragraph (1)(C), an entity shall be treated as a
22 start-up business so long as not more than 75 per-
23 cent of the entity is owned by any person who pre-
24 viously conducted a similar trade or business at any
25 time within the 1-year period ending on the date on

1 which such entity is formed. For purposes of the
 2 preceding sentence, a person and any other person
 3 bearing a relationship to such person specified in
 4 section 267(b) or 707(b)(1) shall be treated as one
 5 person, and sections 267(b) and 707(b)(1) shall be
 6 applied as if section 267(c)(4) provided that the
 7 family of an individual consists of the individual's
 8 spouse and the individual's children under the age of
 9 21.

10 “(3) REQUIRED TAXABLE YEAR.—The term ‘re-
 11 quired taxable year’ has the meaning given to such
 12 term by section 444(e).

13 “(e) TIERED STRUCTURES.—The Secretary shall
 14 prescribe rules similar to the rules of section 444(d)(3)
 15 to eliminate abuse of this section through the use of tiered
 16 structures.”.

17 (b) CONFORMING AMENDMENT.—Section 444(a)(1)
 18 of such Code is amended by striking “section,” and insert-
 19 ing “section and section 444A”.

20 (c) CLERICAL AMENDMENT.—The table of sections
 21 for part I of subchapter E of chapter 1 of such Code is
 22 amended by inserting after the item relating to section
 23 444 the following new item:

“Sec. 444A. Qualified small businesses election of taxable year ending in a
 month from April to November.”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 the date of the enactment of this Act.

4 **SEC. 8. INCREASE IN MAXIMUM NUMBER OF S CORPORA-**
 5 **TION SHAREHOLDERS.**

6 (a) IN GENERAL.—Subparagraph (A) of section
 7 1361(b)(1) is amended by striking “100” and inserting
 8 “150”.

9 (b) EFFECTIVE DATE.—The amendment made by
 10 subsection (a) shall apply to taxable years beginning after
 11 the date of the enactment of this Act.

12 **SEC. 9. GOVERNMENT CONTRACTS WITH SMALL BUSI-**
 13 **NESSES NOT SUBJECT TO TAX WITHHOLDING.**

14 (a) IN GENERAL.—Paragraph (2) of section 3402(t)
 15 is amended by striking “and” at the end of subparagraph
 16 (H), by striking the period at the end of subparagraph
 17 (I) and inserting “, and”, and by adding at the end the
 18 following new subparagraph:

19 “(J) to any specified small business.”.

20 (b) SPECIFIED SMALL BUSINESS.—Subsection (t) of
 21 section 3402 is amended by redesignating paragraph (3)
 22 as paragraph (4) and by inserting after paragraph (2) the
 23 following new paragraph:

24 “(3) SPECIFIED SMALL BUSINESS.—For pur-
 25 poses of this subsection, the term ‘specified small

1 business’ means a corporation or partnership which
2 meets the gross receipts test of section 448(c) for
3 the taxable year prior to the taxable year in which
4 the payment is received (or, in the case of a sole
5 proprietorship, which would meet such test if such
6 proprietorship were a corporation).”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect as if included in section 511
9 of the Tax Increase Prevention and Reconciliation Act of
10 2005.

○